

In the Matter of License ~~Z-901016-D1~~ R-2863 and Merchant Mariner's Document No. Z-901016-D1

Issued to: KENNETH LEE LITZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

935

KENNETH LEE LITZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 13 July 1956, an Examiner of the United States Coast Guard at Corpus Christi, Texas, revoked License No. R-2863 and Merchant Mariner's Document No. Z-901016-D1 issued to Kenneth Lee Litz upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as radio operator on the American SS MICHAEL under authority of the document and license above described, on or about 10 May 1956, he was convicted by the United States District Court for the Southern District of Texas, Brownsville Division, a court of record, for violation of 18 U.S.C. 545 (First Specification); and, on or about 29 April 1956, he wrongfully had marijuana in his possession (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence a certified copy of the Final Judgement and Sentence in the case of United States of America v. Kenneth Lee Litz and evidence that Appellant failed to join the MICHAEL at Corpus Christi on 29 April 1956.

In defense, Appellant offered in evidence his sworn testimony and numerous character references. Appellant testified that he was intoxicated when a taxi driver in Mexico sold Appellant one-half ounce of marijuana while he was on authorized shore leave from the MICHAEL; and Appellant was apprehended upon returning to Brownsville early on the morning of 29 April 1956. The exact date of the offense was stipulated by the parties.

At the conclusion of the hearing, having heard the argument of Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and two specifications had

been proved. He then entered the order revoking Appellant's License No. R-2863, Merchant Mariner's Document No. Z-901016-D1 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 28 and 29 April 1956, Appellant was in the service of the American SS MICHAEL as radio operator and acting under authority of his License No. R-2863 and Merchant Mariner's Document No. Z-901016-D1 while the ship was in the port of Corpus Christi, Texas.

On 28 April 1956, Appellant left the ship on authorized shore leave with the intention of returning on board before the ship departed from Corpus Christi on the following day. Appellant went to Brownsville, Texas and then to Mexico where he purchased approximately one-half ounce of marijuana. When Appellant returned to Brownsville early on the morning of 29 April, he was apprehended with the marijuana in his possession. Appellant was taken into police custody and, consequently, failed to join his ship when she departed later in the day.

On 10 May 1956, Appellant was convicted by the United States Court for the Southern District of Texas, Brownsville Division, a court of record, for smuggling marijuana, on 29 April 1956, in violation of the general smuggling statute, 18 U.S.C. 545. Imposition of sentence was suspended and Appellant was placed on probation for a period of three years.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

POINT I. He was not serving under the authority of his license and document, within the meaning of R. S. 4450, while on shore leave 150 miles from the ship.

POINT II. The Examiner was not required to impose an order of revocation and he should have exercised his discretion in view of the mitigating circumstances and evidence as to Appellant's good character.

POINT III. The action of the court in suspending imposition of sentence was not a final judgement of conviction since there is no final judgement until a sentence has been entered by the court.

For these reasons, Appellant prays that the decision of the Examiner be reversed.

APPEARANCE: Anderson and Porter of Corpus Christi, Texas, by William R. Anderson, Jr., Esquire, of Counsel

OPINION

It has been held repeatedly in these proceedings that jurisdiction attached under R.S. 4450, as amended (46 U.S.C. 239), even though the misconduct is committed while the seaman is on shore leave. Since the employment relationship continues to exist while a seaman is ashore during the course of a voyage, he is considered to be "in the service of the ship" and, therefore, "acting under authority of his document." The latter is the jurisdictional requirement of 46 U.S.C. 239. See Commandant Appeal Nos. 361, 795, and 916. Appellant does not question the fact that he was still in such an employment status at the time of his apprehension. He testified that he intended to return to the ship at Corpus Christi.

Narcotics offenses are considered to be so serious that revocation is mandatory in all such cases. 46 CFR 137.03-1. This statement of policy, as set forth in the latter regulation, is consistent with the statutory duty of the Coast Guard in these proceedings and it never has been judicially questioned. Hence, the Examiner was not entitled to impose any order other than revocation regardless of the mitigating circumstances.

According to Federal law, the judgement is final in cases where either execution of sentence or imposition of sentence is suspended and a person is placed on probation by the court. Korematsu v. United States (1943), 319 U.S. 432.

For the above reasons, it is my opinion that the three points raised on appeal are without merit.

The ultimate finding with respect to the First Specification and the conclusion that this specification was proved are reversed because there is no evidence that Appellant was acting under the authority of his license and document on the date of conviction, 10 May 1956, as alleged in the specification. In fact, the indications are strongly to the contrary. But regardless of this factor, the First Specification is considered to have become merged with the Second Specification since both specifications pertain to exactly the same offense. Furthermore, it is not appropriate in proceedings under R. S.4450, as amended (46 U.S.C. 239), as distinguished from proceedings under 46 U.S.C. 239a-b (Public Law 500, 83d Congress, 68 Stat. 484), to allege a conviction as the offense upon which action is based. The Second Specification alleging the wrongful possession of marijuana requires that the order of revocation be sustained.

ORDER

The First Specification is dismissed. The order of the Examiner dated at Corpus Christi, Texas, on 13 July 1956, is
AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 14th day of November, 1956.